

United States District
Court for the Northern District of California

Daniel Pailes, pro se, Objector to:

Case Number: 5:11-CV-04585 EDJ

Richard Noll and person similarly situated et al

Vs.

Ebay, Inc, Et AL

Notice of Objection to the Finalized Settlement

I, Daniel Pailes, a former seller on Ebay was affected by their wrongful actions in this lawsuit. Pailes like nearly all the class-members in this lawsuit, who refused to pay Ebay's wrongful fees, suffered extensive losses and damages. There are many more damages than is reflected in this settlement. In many cases, not some cases, sellers were forced to go into bankruptcy in their business. In addition, many sellers could not endure the negligent surge of wrongful insertion fees in their account with Ebay. In this objector's mind, these actions were unjust enrichment and were beyond a breach of contract.

Pailes cannot see where unjust enrichment and breach of contract are one in the same. They are not. Federal Courts have been split on the claim of unjust enrichment. Unjust enrichment is an element of damage within a breach of contract. The judge in this case states, "This district has recognized that a claim for unjust enrichment exists under California law when there is no contractual relationship between the parties. Noll vs Ebay Case NS:11 CV 0 4585 EJD.

There was a contractual relationship between the seller and Ebay, the breach of which becomes the restitution in damages for that breach. The element of unjust enrichment is the unlawful profit made on the breach. California law has recognized unjust enrichment within a contract. It seems courts have been intent on equity and reducing claims to restitution for victims against large corporations and banks, who have deliberately siphoned funds with their malice intent against people who actually produce or sell a product.

The Supreme Court in *Ghirardo v. Antonioli* (1996) No. S032435. Oct 31, 1996, has spoken on the issue of unjust enrichment. Ebay took advantage of the seller in this case for their own benefit. The claim for unjust enrichment is not exclusive to a breach of contract and can be brought as an element of the breach. The “Principles of unjust enrichment, more recently codified in Civil Code section 2943, permit a seller to seek recovery of sums omitted from a payoff statement as an unsecured obligation. The seller in this matter pleaded and 14 Cal.4th 44 proved a cause of action based on a theory of unjust enrichment. Accordingly, we reverse the judgment of the Court of Appeal and remand the matter for further proceedings consistent with this opinion.” *Ghirardo v. Antonioli* (1996) No. S032435. 1996

In addition, California courts have recognized that an error such as a billing error in fees is the same thing as an entity or person being unjustly enriched. “The court agreed a party should not be entitled to rely in bad faith on a lender's erroneous payoff statement, if that party is unjustly enriched because of the error.” *Freedom Financial Thrift & Loan v. Golden Pacific Bank*, *supra*, 20 Cal.App.4th at p. 1315.

Moreover, Ebay went further in their attacks against their sellers in this case. If they, the sellers,

did not agree or refused to pay the wrongfully inflated rate on the “Good till Closing Fees”, Ebay then would shut down their account. This meant no purchasing on Ebay with your account, or selling; thus you were a “scorned person” in false light before the public. Your seller’s reputation was wrongfully tarnished. Yet, it came from a false impression wrongfully created by Ebay. Solano v. Playgirl, Inc., 292 F.3d 1078 (9th Cir. 2002 and California Civil Code 45a.

Ebay was at fault in this case and refuses to admit it. Instead, Ebay settled here with the plaintiff lawyers providing the sellers “peanuts” for their damages. This entity, Ebay placed these damages on their sellers.

The District Court in this case can require the plaintiff’s lawyers to amend the settlement.

The plaintiff lawyers in this case will receive far more than 25% percent of the settlement offered to the consumer and seller in this case. That is a fact. It is unequal in terms of equity and unjust for this court to certify a payday for the plaintiff lawyers. It is also unjust not to see the larger societal problem, in how; justice is served in our society’s justice system on financial cases. Furthermore, it does not address the real damages in this case. The producing part of our society is being barred from bringing real claims of damages that actually occurred.

Ebay’s wrongful actions in this case, profiting wrongfully with these inflated fees through unjust enrichment, will set the wrong precedent for the future for internet buyers and sellers.

There was a contractual agreement between the parties here. According to the judge’s decision that a breach of contract did exist, however these claims did not go to full trial with a settlement

being brought here. For a large number of the class, these honest hard-working sellers have been damaged in credit accuracy and within the business community. They have also been shunned, disparaged, defamed and besmirched in a wrongful manner by Ebay. The class members are being re-victimized by the plaintiff lawyers because of their lazy efforts at being adequate counsel by not suing for the appropriate damages to make the sellers whole again. Many members are sole proprietors; thus Ebay, a commercial organization, falsely claimed that an individual owes them money, when in fact it was the wrongfully inflated fees. Ebay was trying to collect on sellers illegally. 15 U.S.C.A. § 1666a Regulation of credit reports (a) Reports by creditor on obligor's failure to pay amount regarded as billing error.

According to Ebay's "no holds barred" techniques to please the customer and damn the sellers. Ebay proceeded with the following actions against Daniel Pailles and the rest of the class that are not addressed by the plaintiff lawyers. If this court tries to state that the objectors' numbers are low and this case can be put to rest, then the continued injustice in class actions will persist and the attitude of remedy in a settlement is: "Give the Peasants what they deserve, let them eat cake."

If this Settlement is not Ammended

Then what is the role of the objector? Where is the fairness in this class action when the class gets chump change and the plaintiff lawyers become flush with attorney fees? Objectors are not normally heard. Judges don't take them seriously, yet in the name of justice, objectors like in this case are providing the judge with an opportunity to address the victims of this settlement agreement. The victims are class members. They are the ones' affected by the company, Ebay. Ebay has damaged these businesses and sole-proprietorships with negligent actions. Judges from

around the country have ignored objectors. Who are the real persons who have suffered the injustice? They are identified, sent a postcard, and dispersed a check for fifty odd dollars, providing them with pennies on the dollar. In this case, the class suffers more indignity and is left with the miserable task of cleaning up the wrongs in their credit damage that was inflicted upon them, the credit damage with the credit bureaus and their own reputation as a seller on the internet, their loss of time in business through cleaning up the mess.

Daniel Pailes

Daniel Pailes 4/15/15